BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Access Charge Reform	)	CC Docket No. 96-262
Price Cap Performance Review For Local Exchange Carriers	)	CC Docket No. 94-1
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
Usage of the Public Switched Network By Information Service and Internet Access Providers	)	CC Docket No. 96-263

INITIAL COMMENTS OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

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In conformance with the Federal Communication Commission's ("FCC" or "Commission") General Rules of Practice and Procedure, 47 C.F.R. §§ 1.41 et seq. (1996), the National Association of Regulatory Utility Commissioners ("NARUC") respectfully submits the following comments in response to the FCC's NOTICE OF PROPOSED RULEMAKING ("NPRM") adopted December 23, 1996 and released December 24, 1996 in the above captioned proceeding.

Executive Summary

Because of the timing of the NPRM, NARUC did not have an opportunity to pass a resolution specifically addressing this proceeding. However, based upon, inter alia, a review of past NARUC resolutions, the October 1996 Staff Access Reform White paper, and other filed comments, NARUC respectfully suggests the following:

1. **SEPARATIONS REFORM MUST BE UNDERTAKEN IMMEDIATELY; THE FCC SHOULD REFER "COMPREHENSIVE REVIEW" AND REMAINING RELATED UNIVERSAL SERVICE ISSUES TO THE APPROPRIATE JOINT BOARD.**

The NPRM acknowledges that Separations Reform is a necessary corollary to reformation of the federal access charge regime. The need to consider separations changes and the conclusions stemming from that proceeding must be coordinated closely and synchronized with final action in this docket.

2. **ILECS SHOULD HAVE THE BURDEN OF DEMONSTRATING THAT DOUBLE RECOVERY OF COSTS VIA THE HIGH COST FUND AND THE NEW ACCESS CHARGE REGIME WILL NOT OCCUR. IF THE FCC INSTIGATES PROCEDURES TO ALLOW RECOVERY OF SO-CALLED INTERSTATE RESIDUAL COSTS, RECOVERY MUST BE COMPETITIVELY NEUTRAL.**

The FCC and the appropriate Joint Boards must assure that ILECs do not over-recover their costs because of the structure of access charges and qualification for high cost funds from the Universal Service Fund. Incumbent Local Exchange Carriers ("ILECs") should have the burden of demonstrating that double recovery will not occur. The related question of whether interstate recovery of the so-called residual costs should be allowed is more appropriately the subject of a separate proceeding. If such interstate recovery is allowed, it should be done in a competitively neutral manner via a separately earmarked fund of limited duration.

3. **A PRESCRIPTIVE APPROACH TO ACCESS REFORM MIGHT BE NECESSARY IN THE SHORT RUN, BUT SUCH RATES SHOULD BE MARKET-BASED IN SUSTAINABLE MARKETS.**

A prescriptive approach may be necessary in the short run, but market-based rates are preferable in sustainable markets. Competitiveness of markets should determine the transition. No specified date for a cut-over in any particular market should be imposed at this time. Market-based rates should be geographically limited to areas where there is significant actual competition for the access service or element in question.

In any case, the FCC should not limit the "triggers" for allowing a market-based approach to those costing standards imposed in the Interconnection proceeding. Rather the Commission should allow the full panoply of state-approved pricing for competitive services to be utilized.

4. THE CCL NTS COSTS SHOULD NOT BE RECOVERED THOUGH MINUTES OF USE RATES.

Carrier Common Line NTS costs should not be recovered through minutes-of-use rates. However, NARUC does not agree that it would be appropriate to impose these costs on end-users, directly or indirectly. Users of access services, e.g., CLECs, IXCs and ILEC long distance service subsidiaries, should have to recover such costs.

In support of these positions, NARUC states as follows:

I. NARUC'S INTEREST

NARUC is a quasi-governmental nonprofit organization founded in 1889 to, inter alia, improve the quality and effectiveness of public utility regulation. Members include the commissions from all states, the District of Columbia, Puerto Rico, and the Virgin Islands, that regulate, inter alia, intrastate telecommunications services. NARUC also (i) nominates state members to the 47 U.S.C. § 410 mandated Federal-State Joint Boards, (ii) actively represents state interests in FCC dockets that impact state regulatory initiatives, and (iii) collaborates with the FCC Common Carrier Bureau in matters of common interest.[1] Although the FCC lacks the jurisdiction or ability to set intrastate rates, many state access charge regimes mirror the Federal rules.

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[1] See, 47 C.F.R. § 0.91(c) which states the CCB is to "[c]ollaborate with..state [PUCs].. and [NARUC] in...studies of common carrier and related matters."

Also, as the FCC acknowledges, there is a interdependent relationship between access charges, state pro-competitive initiatives, and universal service. Accordingly, the FCC's proposed action in this proceedings clearly raises issues of critical importance to NARUC's state commission membership.

II. BACKGROUND

The rates and rate structure for LEC access services are developed through a multi-step process. First, revenues, costs, investments and reserves are developed using the Part 32 uniform system of accounts rules. Next, under the Part 36 separations rules, these booked accounting costs are allocated to the interstate and intrastate jurisdictions. The costs assigned to the federal jurisdiction are then recovered through specific rate elements contained in Part 69.[2] These Part 69 rules, although amended to accommodate, inter alia, price caps and the interstate tariffing of ONA services, were developed in 1983 to respond to AT&T divestiture and have not undergone a comprehensive review since that time.

In contrast, the communications industry and regulatory policies have significantly changed since Part 69 was developed. For example, when originally adopted, the Part 69 rules assumed that the access market was an unsegmented monopoly. However, since 1983 the market seems to have become highly segmented. Thus, the market for high-capacity special access services is competitive in some densely populated urban areas.

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[2] This is a highly simplified description that does not take into account additional step under Parts 64 and 65. It is important to note, however, that the Part 36 rules only separate costs between jurisdictions; they do not allocate costs to access elements. These costs are recovered by rates developed on an average basis by LEC "study areas."

Lower capacity services face varying degrees of competition in such areas. Outside urban areas, there is less competition for special services.

To date, switched services have been subject to minimal direct competition in any area. However, given the large number state-arbitrated interconnection agreements recently approved, an increase in competition for such services, at least in the more densely populated parts of the country, may be underway.

In addition, new digital technologies such as SS7 have been deployed that provide services not contemplated in Part 69, and flat-rate usage of the local loop to provide Internet services has increased exponentially. Of course the most significant occurrence fomenting an increased urgency to reform Part 69, in conjunction with the obvious need for separations reforms, is the passage last year of the Telecommunications Act of 1996[3] ("Act"). In response, on December 24, 1996, the FCC issued the NPRM in this proceeding. The NPRM, inter alia, instigates a review of the FCC's access charge rules, together with its price cap rules, to establish fair rules of competition for both the local and long distance markets. The FCC must determine how to revise these rules in light of (i) the local competition and Bell entry provisions of the 1996 Act, (ii) state actions to advance local competition, (iii) the effects of potential and actual competition on incumbent LEC pricing for interstate access, and (iv) the impact of the mandate to preserve and enhance universal service.

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[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 State. 56 (1996) (to be codified at 47 U.S.C. §§ 151 et seq.).

III. DISCUSSION:

A. SEPARATIONS REFORM MUST BE UNDERTAKEN IMMEDIATELY; THE FCC SHOULD REFER "COMPREHENSIVE REVIEW" AND REMAINING RELATED UNIVERSAL SERVICE ISSUES TO THE APPROPRIATE JOINT BOARD.

In ¶ 6, of the NPRM, mimeo, the FCC acknowledges that separations reform is a necessary corollary to reforming the federal access charge regime, stating, "[w]hile our Part 69 rules expressly contemplated competition in the interexchange market, they were not designed to address the potential effects of competition in the local exchange and exchange access market." In the same paragraph, the FCC goes on to suggest the Part 69 rules themselves "likely" reflect "jurisdictional cost misallocations mandated" by the current separations rules, claiming for that reason, that those rules are "fundamentally inconsistent with the competitive market conditions . . . the 1996 Act attempts to create." The Commission then notes it "will soon begin a related proceeding to examine our jurisdictional separations rules in light of the 1996 Act."

As these FCC pronouncements suggest, the needed separations changes must be closely synchronized with final action in this docket. The NPRM asks for comment upon numerous issues directly tied to possible "misallocations" of costs arising from the separations process.[4] The basis for FCC action on many of these issues must rest upon some preliminary assessment about the accuracy and appropriateness of existing Part 36 procedures.

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[4] Cf., NPRM at ¶¶s 108-111, mimeo at 53-54, where the FCC, as background for its proposed TIC changes, discusses various commentors concerns about possible inappropriate "overallocation of costs to the interstate jurisdiction."

Indeed even the FCC, in ¶ 116, acknowledges that one proposed solution to the treatment of the TIC would "undoubtedly" require prior Joint Board input.[5] Commentors will undoubtedly multiply the separations issues presented for direct or indirect resolution.

NARUC is also concerned about the universal service and transition issues in the NPRM that have not yet been the subject of either a §254 or 80-286 Joint Board Recommendation. NARUC agrees generally with the suggestion in Part VII of the NPRM, ¶¶s 241-270, that any access charge reform must be carefully transitioned and considered along with universal service. That section generally addresses transition issues associated with universal service and the treatment of any remaining embedded costs allocated to the interstate jurisdiction. Some of the changes suggested by the NPRM to reduce interstate access charges have the potential to divert funds traditionally used to support intrastate high costs. Such a shift in jurisdictional support may ONLY be accomplished through a recommendation of the appropriate federal-state joint board.

In ¶ 258, the FCC suggests referring to "state specific" § 410(a) joint boards, issues relating to the difference between revenues generated by rates based on embedded costs and revenues produced by rates based on forward-looking costs. State PUCs would conduct the necessary rate cases and make recommendations concerning FCC disallowances of imprudently incurred investments or excessive expenditures.

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[5] Specifically, in that paragraph, mimeo at 55, the FCC states that the proffered alternative would "undoubtedly identify cost allocation problems that we could not remedy in this proceeding because of the need to refer jurisdictional costs allocation issues to a Federal-State Joint Board." {Emphasis Added} Later, in ¶ 225, the FCC also asks "whether any special mechanisms would be necessary to ensure that the jurisdictional separations process does not allocate additional residual embedded costs to the interstate jurisdiction during any transitional period."

Based on the state report, the FCC would determine how the interstate portion of any difference is recovered. The FCC believes this approach has merit, because it "permits coordinated treatment between the federal and state jurisdictions and assigns . . . rate cases to state commissions, which have substantial experience with the carriers." It also ". . . conserves industry resources, because each state will have to address the issue of embedded cost recovery if it decides to set prices for intrastate services . . . on some basis other than embedded costs." *NARUC takes no position on the issue of whether recovery of so-called "stranded" or "residual" costs should be allowed.* However, NARUC does agree with the suggestion that states have discretion over the recovery of any intrastate "residual" costs. Also, while the posed § 410(a) option may have merit, it cannot substitute for and indeed must rely upon the needed revision of the Part 36 Rules. Section 254 requires that the § 254 Joint Board provide a recommendation on all aspects of the interstate USF fund. Section 410(c) requires that any needed changes to the Part 36 rules be the subject of a Joint Board recommendation. NARUC urges the FCC to promptly refer all issues related to jurisdictional separations arising from the implementation of the Act to the appropriate joint board.

B. ILECs SHOULD HAVE THE BURDEN OF DEMONSTRATING THAT DOUBLE RECOVERY OF COSTS VIA THE HIGH COST FUND AND THE NEW ACCESS CHARGE REGIME WILL NOT OCCUR. IF THE FCC INSTIGATES PROCEDURES TO ALLOW RECOVERY OF INTERSTATE RESIDUAL COSTS, NARUC AGREES WITH THE SUGGESTION IN ¶ 264 THAT RECOVERY OF SUCH COSTS MUST BE UNDERTAKEN IN A COMPETITIVELY NEUTRAL FASHION.

The FCC and the appropriate joint boards must assure that LECs do not over-recover their costs from a combination of the restructured access charges and Universal Service Fund support. The ILEC should have the burden of demonstrating that double recovery will not occur.

In addition, if the FCC implements the § 410(a) procedures for initial determinations of how LEC-specific interstate "residual" costs are to be treated in this proceeding, by definition the FCC will have to determine whether recovery is to be allowed, and, if so, in what fashion. The question of whether interstate recovery should be allowed is more appropriately the subject of a separate proceeding. If interstate recovery is allowed, NARUC agrees with the suggestion in ¶ 264 that it must be done in a competitively neutral manner. Should the FCC determine that all or a portion of these costs should be recovered, NARUC recommends that the recovery be made through a separately earmarked fund of limited duration. Use of a limited specific fund would help prevent the continuation of implicit subsidies. Related issues should be the subject of the appropriate Joint Board's recommendation.

C. A PRESCRIPTIVE APPROACH TO RATE REFORM MIGHT BE NECESSARY IN THE SHORT RUN, BUT SUCH RATES SHOULD BE MARKET-BASED IN SUSTAINABLE MARKETS.

In Sections IV through VI, the NPRM outlines two alternatives to access reform: a market-based approach and a more prescriptive approach. Under the market-based approach, market pressure would move interstate access prices to competitive levels. This approach could be implemented incrementally, first eliminating certain regulatory constraints as incumbent price cap LECs demonstrate through credible, verifiable evidence that the conditions necessary for efficient local competition to develop exist in their service areas. Then, as ILECs show that competition has emerged, additional regulatory constraints, including mandatory rate structures, would be eliminated to allow those LECs to adjust their interstate access rates. Finally, when substantial competition has developed, price regulation would be eliminated.

Although NARUC favors market-based solutions, we are concerned that the market-based approach proposed, if implemented immediately, will not result in access rates that are based on economic cost. Dramatic regulatory reforms at both the state and Federal level are smoothing the way for competitive entry and the development of sustainable competition in some markets. However, nascent competitive markets need to evolve significantly before they can provide the needed discipline on LEC access charges regimes. Indeed, we believe that a market-based approach, if implemented immediately, may allow ILECs to assess inflated access charges.

Accordingly, NARUC advocates the use of a prescriptive approach initially, with a transition to a market-based approach gradually in those markets where and when significant actual competition evolves. Actual competitiveness of the markets should determine the transition. Therefore, the FCC should not mandate any time-certain date for cut-over to market-based rates. Moreover, when market-based rates are allowed, they should be geographically limited to areas where there is competition.

In any case, the FCC should not limit the "triggers" for allowing market-based approaches to those stayed costing standards imposed in the August 8th Interconnection Order. Rather the Commission should allow the full panoply of state-approved pricing for competitive services to be utilized, and the transition to market-based rates to vary depending upon the level of actual competition in specific geographic markets.

D. ALTHOUGH NARUC AGREES THE CCL SHOULD NOT BE RECOVERED THOUGH MINUTES OF USE RATES, WE OPPOSE THE DIRECT OR INDIRECT IMPOSITION OF ANY END-USER/RATEPAYER SURCHARGE TO RECOVER THE NTS COSTS REMAINING IN CCL.

Currently, about twenty-five percent of the unseparated cost of LECs' subscriber loops is allocated to the interstate jurisdiction. These carriers recover a significant portion

of that non-traffic sensitive ("NTS") interstate loop cost allocation directly from subscribers through flat monthly subscriber line charges ("SLCs"). The FCC's rules impose caps on the SLC rate at $3.50 per month for residential and single-line business users and $6.00 per month for multi-line business users.[6] LECs' remaining interstate allocated loop costs are currently recovered through a per-minute carrier common line ("CCL") charge paid by IXCs, and ultimately by subscribers in their interstate long distance rates.

The current common line rate structure, in which only a portion of common line costs are recovered through flat monthly rates, does not reflect the manner in which loop costs are incurred. As a result, it has been argued, the common line rate structure forces incumbent LECs to recover costs in an economically inefficient manner, and so may cause inefficient use of the network and uneconomic bypass. Indeed, the CCL has been uniformly criticized by both ILECs and IXCs because it discourages efficient use of the network and encourages uneconomic bypass. In the NPRM, ¶¶ 57-70, the FCC sets forth some alternative proposals for recovery of such NTS costs. With respect to the CCL, in ¶¶ 59-63, the FCC presents four alternatives, including a flat-rate charge assessed against each customer's presubscribed interexchange carrier ("PIC") or an end-user if no PIC is chosen. With respect to the SLC, the NPRM suggests, at ¶¶ 64-67, increasing the SLC for the second and additional lines for residential and for all multi-line business lines to recover the per-line loop costs assigned to the interstate jurisdiction and/or eliminating the cap for such services and allowing the LECs to charge more than the assigned per-line loop cost.

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[6] 47 C.F.R. §§ 69.104(c)-(e), 69.203(a). If the interstate allocation of common line costs in a study area is lower than the SLC cap, the lower number is used.

NARUC agrees with the policy that the NTS costs in the CCL should not be recovered on a minutes of use basis. However, that does not mean we agree with any options that would effectively impose additional flat charges directly on the end-user, even for second lines into the home. A brief review of the proceedings that lead to the SLC's adoption in the early 1980's demonstrates NARUC's historical opposition to such charges.[7] NARUC opposes increasing or eliminating the cap on SLCs. We also are deeply concerned with the administrative difficulties of having different charges assigned to primary and secondary lines. While we have not adopted a formal position on the CCL recovery proposals outlined in this proceeding, in the USF proceeding in CC Docket 96-45, we did make some useful suggestions which have application in this docket.

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[7] **See**, the November 18, 1986 Resolution Urging the [FCC] to Consider Other Regulatory Approaches than Increases in Subscriber Line Charges, NARUC Bulletin No. 48-1986, p. 10; NARUC Bulletin No. 10-1987, p. 3; the July 22, 1987 Resolution Supporting Affirmative Votes of the Joint Board and the FCC Before Second and Third Phases of $1.50 SLC Increases Are Effective, NARUC Bulletin No. 31-1987, p. 15; the July 29, 1982 Resolution re: Communications Access Charges, NARUC Bulletin No. 32-1982, pp. 13-14, where in response to the original SLC proposal, NARUC asked the FCC to defer any action pending a Joint Board recommendation, and specifically supported "in the short term" a non-SLC approach; the November 16, 1983 Resolution Supporting Action by the United States Congress for Universal Telephone Service Legislation; **Cf.** the July 22, 1987 Resolution Urging the FCC to Allow Public Comment on the Federal-state Joint Board Proposal to Monitor the Effects of Changes in the Access Charge Plan, NARUC Bulletin No. 31-1987, pp. 15-16; the March 1, 1989 Resolution Opposing the Rates Filed by AT&T for Final SLC Pass-through; the May 8, 1984 - ST. LOUIS RESOLUTION, NARUC Bulletin No. 20-1984, p. 11; See, also, 90th NARUC Annual Convention Proceedings, p. 1195 (1978), 90th NARUC Annual Convention Proceedings, p. 1195 (1978), 91st NARUC Annual Convention Proceedings, p. 1205 (1979), 92nd NARUC Annual Convention Proceedings, p. 1117 (1980), 93rd NARUC Annual Convention Proceedings, p. 1129 (1981), 94th NARUC Annual Convention Proceedings, p. 1411 (1982), 95th NARUC Annual Convention Proceedings, p. 1412 (1983), 96th NARUC Annual Convention Proceedings, p. 1600 (1984), 97th NARUC Annual Convention Proceedings, p. 1180 (1985), 98th NARUC Annual Convention Proceedings, p. 1136 (1986), 99th NARUC Annual Convention Proceedings, p. 1142 (1987).

Specifically, in the USF proceeding NARUC suggested the following: if the Joint Board finds that it is not economically efficient to recover non-traffic sensitive NTS costs on a traffic sensitive basis via CCL, it still is not necessary to increase the SLC or impose some related flat-charge on end-users. From an economic perspective, the flat structure of the charge is the focal characteristic, not who pays it. Interexchange carriers should pay a portion of the NTS loop cost because they use the LECs loop to provide their services. Instead of raising the SLC to cover CCL costs, we suggest the following:

1 - All interstate NTS loop costs be identified, including those currently recovered through the SLC, and reduced to a per line charge.

2 - The charge be assessed to the end-user's presubscribed IXC.

3 - If the end-user occasionally uses other carriers, a per line charge could be divided among all carriers using the common line on the basis of relative use by each carrier.

4 - IXCs would be free to recover the flat charge payment any way the market will allow, e.g., a minimum bill, tapered usage rates, etc, as long as the charges to the end-user come from the IXC and not the LEC.

Our suggestions have clear and close parallels to some of the NPRM proposals. An obvious advantage to adopting such an approach in this proceeding is greater consumer understanding. Consumers now tend to think that their only charges for interstate service are the per-minute charges billed to them by their interexchange carriers. Moreover, in general accord with the professed preferences of Congress, this approach allows the marketplace to determine how NTS costs are ultimately recovered from end-users, rather than prescribing they be recovered the same way in all cases.[8]

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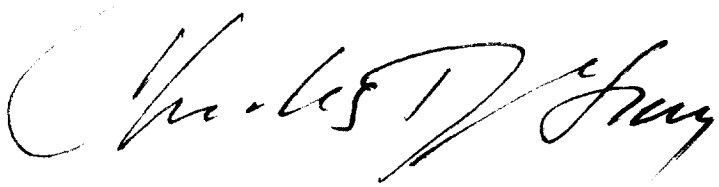
[8] Thus, some IXC's may choose to impose flat end-user charges, tapered charges, or minimum bills. Others may choose to absorb all or part of the cost as part of their cost of doing business, or to obtain a competitive advantage.

IV. CONCLUSION

NARUC respectfully requests that the FCC carefully consider the policy positions outlined above for incorporation in any final order in this proceeding. We also specifically request referral of the related separations and universal service issues arising out of this proceeding to the appropriate joint board and a concomitant increase in the resources devoted to the Joint Board process.

Respectfully submitted,



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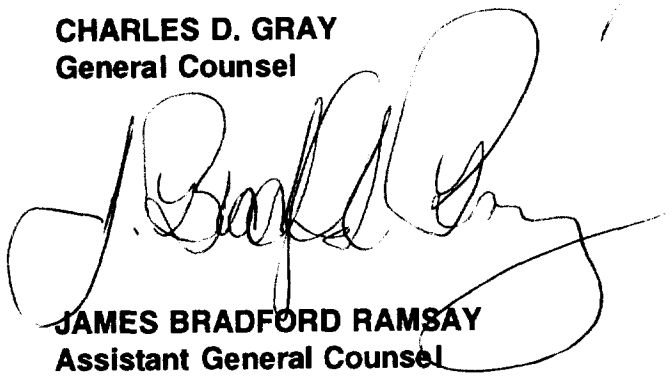

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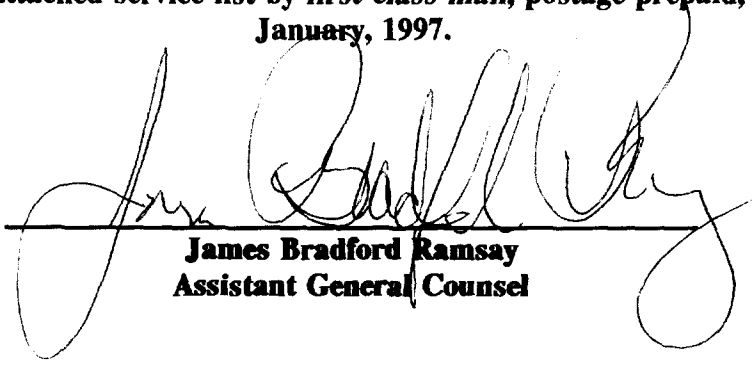
CERTIFICATE OF SERVICE

I, JAMES BRADFORD RAMSAY, certify that I have served a copy of the foregoing on all the parties on the attached service list by first class mail, postage prepaid, this 16th day of January, 1997.



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